

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**E.W., Appellant**

**and**

**U.S. POSTAL SERVICE, MAIN POST OFFICE,  
Fayetteville, NC, Employer**

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**Docket No. 07-1522  
Issued: November 6, 2007**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

ALEC J. KOROMILAS, Chief Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

**JURISDICTION**

On May 14, 2007 appellant filed a timely appeal of a March 26, 2007 decision of the Office of Workers' Compensation Programs denying her emotional condition claim and an April 17, 2007 decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this appeal.

**ISSUES**

The issues are: (1) whether appellant sustained an emotional condition as a result of a February 9, 2007 employment incident; and (2) whether the Office properly denied her request for reconsideration pursuant to 5 U.S.C. § 8128(a).

**FACTUAL HISTORY**

On February 10, 2007 appellant, then a 52-year-old supervisor, filed a traumatic injury claim alleging stress as a result of being taken out of her job. She noted that on February 9, 2007 she began to shake, her head began hurting and she became dizzy.

By letters dated February 15 and 28, 2007, the employing establishment controverted appellant's claim contending that she failed to establish fact of injury as she attributed injury to a personnel matter and that she did not submit medical evidence showing a causal relationship between her condition to the alleged factors of federal employment.

In a March 5, 2003 letter, the employing establishment noted that in October 2006 numerous employees at the Fayetteville North Carolina Processing and Distribution Center had reported to management that appellant constantly yelled and did not treat her employees with respect and dignity. The employing establishment conducted an investigation based on allegations that appellant stole money from the employing establishment and from some of its employees. The employing establishment noted that appellant was made aware of these investigations and placed on a special assignment pending the outcome. The employing establishment contended that appellant's claim related to a personnel action and was not compensable.

In a March 2, 2007 statement, the plant manager noted that, prior to the beginning of the new fiscal year, the priority scores were not what he thought they should be so he began looking for someone to detail into a priority improvement coordinator to identify ways to improve the scores on surface and air priority. When asked if she would work on that project, appellant answered yes. The plant manager noted that, at the same time, he met with members of various unions who raised incidents of appellant yelling at employees as well as other improprieties. He noted that appellant began the detail and stayed on through November, at which point she asked how much longer she would be needed on the detail. The plant manager advised her that he would like her to stay with the detail until some progress had been shown with her new assignment and the scores improved. He noted that on February 9, 2007 he was informed that appellant was not feeling well and was taken to a doctor's office.

By letter dated February 20, 2007, the Office requested that appellant submit further information. On March 5, 2007 appellant indicated that when she reported to work on February 9, 2007 she felt fit and in perfect condition. However, she began to tremble and shake, felt the walls start to close in around her, and experienced head pounding, loss of appetite and started having homicidal thoughts. Appellant called her niece to come and get her and she went to the emergency room. She also submitted an undated memorandum which addressed problems with a certain employee. Appellant indicated that this employee acted in an irate, racist, disorderly and disrespectful manner to management and other employees. She contended that the employing establishment did not treat her fairly or with dignity and respect. Appellant also submitted medical documents in support of her claim.

By decision dated March 26, 2007, the Office denied appellant's claim because the evidence was insufficient to establish that she sustained an injury in the performance of duty.

On April 4, 2007 appellant requested reconsideration and submitted an April 9, 2007 report by her psychiatrist.

By decision dated April 17, 2007, the Office denied appellant's request for reconsideration without further merit review. The Office noted that as appellant's claim was

denied because she did not establish a compensable employment factor and the medical evidence submitted on reconsideration was immaterial to this issue.

### **LEGAL PRECEDENT -- ISSUE 1**

To establish her claim that she sustained an emotional condition in the performance of duty, a claimant must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable factors are causally related to her emotional condition.<sup>1</sup>

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,<sup>2</sup> the Board explained that there are distinctions as to the types of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.<sup>3</sup> There are situations where an injury or an illness has some connection with employment but nevertheless does not come within the concept or coverage under the Act.<sup>4</sup> When an employee experiences emotional stress in carrying out her employment duties and the medical evidence establishes that the disability resulted from her reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.<sup>5</sup>

Noncompensable factors of employment include administrative and personnel actions which are matters not considered as arising in the performance of duty.<sup>6</sup> Although the handling of such matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee. However, to the extent that the evidence demonstrates that the employing establishment erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable factor.<sup>7</sup>

In cases involving emotional conditions, the Board has held that when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when

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<sup>1</sup> *Donna Faye Cardwell*, 41 ECAB 730 (1990).

<sup>2</sup> 28 ECAB 125 (1976).

<sup>3</sup> 5 U.S.C. §§ 8101-8193.

<sup>4</sup> See *Anthony A. Zarcone*, 44 ECAB 751, 754-755 (1993).

<sup>5</sup> *Lillian Cutler*, *supra* note 2.

<sup>6</sup> *Joseph DeDonato*, 39 ECAB 1260 (1988).

<sup>7</sup> *James P. Guinan*, 51 ECAB 604 (2000).

providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.<sup>8</sup> If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.<sup>9</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not established a compensable factor of employment under the Act.

Appellant alleged that she experienced stress when taken out of her job. She was placed on a detail pending an investigation with regard to certain alleged improprieties. Appellant's frustration from not being allowed to work in a particular position or to hold a particular job is not a compensable factor. An emotional condition arising therefrom is considered self-generated.<sup>10</sup> The Board finds that appellant remained on the detail pending an investigation by the Office of the Inspector General at the employing establishment. The investigation was also an administrative matter. Although the investigation was generally related to appellant's employment, it is with regard to an administrative function of the employer and not a duty of the employee.<sup>11</sup> Appellant has not established error or abuse in assigning her to the detail work pending the investigation.

The Board has found that an administrative or personnel matter will be considered to be a compensable employment factor only where the evidence discloses error or abuse on the part of the employing establishment.<sup>12</sup> In determining whether the employing establishment acted in error or abusively, the Board has examined whether the employing establishment acted reasonably.<sup>13</sup> The employing establishment has stated that it received numerous complaints with regard to how appellant performed her supervisory duties. It acted in a perfectly reasonable manner when it detailed appellant pending investigation of the allegations. Appellant has not submitted any evidence that the employing establishment acted in an unreasonable manner with regard to this matter. Thus, appellant has not established a compensable employment factor under the Act with respect to these administrative matters.

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<sup>8</sup> See *Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

<sup>9</sup> *Id.*

<sup>10</sup> *Garry M. Carlo*, 47 ECAB 299 (1996).

<sup>11</sup> *Id.*

<sup>12</sup> *Charles D. Edwards*, 55 ECAB 259 (2004).

<sup>13</sup> *Janie I. Moore*, 53 ECAB 777 (2002).

For the foregoing reasons, appellant has not established any compensable employment factor under the Act. Therefore, she has not met her burden of proof in establishing that she sustained an emotional condition in the performance of duty.<sup>14</sup>

### **LEGAL PRECEDENT -- ISSUE 2**

To require the Office to reopen a case for merit review under 5 U.S.C. § 8128(a), the Office's regulations provide that the application for reconsideration must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.<sup>15</sup>

A timely request for reconsideration may be granted if the Office determines that the employee has represented evidence and/or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and is reviewed on the merits.<sup>16</sup>

### **ANALYSIS -- ISSUE 2**

In the instant case, appellant did not meet any of the criteria for requiring the Office to reopen her case for merit review. She did not argue that the Office erroneously applied or interpreted a specific point of law, nor did she raise legal arguments not previously considered. Furthermore, appellant did not submit any relevant and pertinent new evidence. The evidence that she submitted in support of her request for reconsideration were medical reports by her psychiatrist. However, appellant's claim was denied because she did not establish a compensable factor of employment. As medical evidence is not relevant to the pertinent issue, *i.e.*, whether she established a compensable factor of employment, it is not sufficient to require the Office to reconsider appellant's claim on the merits.

Accordingly, the Board finds that the Office properly determined that appellant was not entitled to a review on the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2) and properly denied her request for reconsideration.

### **CONCLUSION**

The Board finds that the Office properly found that appellant did not establish that she sustained an emotional condition as a result of a February 9, 2007 incident. The Board further finds that the Office properly denied her request for reconsideration.

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<sup>14</sup> Unless appellant establishes a compensable factor of employment substantiated by the record, it is unnecessary to address the medical evidence. *See Barbara J. Latham*, 53 ECAB 316 (2002).

<sup>15</sup> 20 C.F.R. § 10.606.

<sup>16</sup> 5 U.S.C. §§ 8101-8193, § 8128(a). The Board has found that the imposition of the one-year time limitation does not constitute an abuse of discretionary authority granted the Office under section 8128(a) of the Act. *See Adell Allen (Melvin L. Allen)*, 55 ECAB 390 (2004).

**ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated April 17 and March 26, 2007 are affirmed.

Issued: November 6, 2007  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board